

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

27234

FILE: B-211105.2**DATE:** January 19, 1984**MATTER OF:** J. C. Yamas Company**DIGEST:**

Equal Access to Justice Act provides for award of attorneys' fees and costs to the prevailing party in "adversary adjudications," as defined in the Administrative Procedure Act. GAO bid protests, however, are not conducted under the latter act, which excludes the legislative branch, so attorneys' fees and costs may not be awarded to the prevailing party in a bid protest.

The J. C. Yamas Company requests that our Office direct the Department of Energy (DOE) to award \$4,524 in attorneys' fees and costs to McMurtrey & Etcheverry of Bakersfield, California. The law firm represented Yamas in a bid protest that we sustained. See J. C. Yamas Company, B-211105, December 7, 1983, 83-2 CPD _____. We deny the claim.

Our decision concerned cancellation of a solicitation issued by Williams Brothers Engineering Company, unit operator at DOE's Naval Petroleum Reserve No. 1 (Elk Hills) in California. Yamas, the highest-rated offeror, had been selected for a subcontract for construction of oil field facilities, but DOE refused to approve the award and directed the cancellation instead. Since February 1983, Williams Brothers has been performing in-house, and it does not intend to resolicit.

Because we found no reasonable basis for the cancellation, we recommended that DOE instruct Williams to award Yamas its proposal preparation costs. By letter dated December 20, 1983, the agency indicates that it has done so.

Yamas claims attorneys' fees and costs under the Equal Access to Justice Act, 5 U.S.C. § 504 (1982). The firm also seeks any additional fees and costs that may

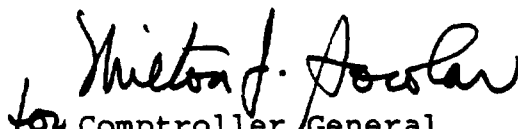
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accrue in connection with determination of the amount of proposal preparation costs and the continuation of a judicial appeal for DOE documents under the Freedom of Information Act.

The Equal Access to Justice Act states, in section (a)(1), that an agency that conducts an "adversary adjudication" shall award, to a prevailing party other than the United States, fees and other expenses incurred in connection with the proceeding, unless the adjudicative officer finds that the position of the agency was substantially justified or that special circumstances make an award unjust.

The Act defines an "adversary adjudication" as a proceeding under the Administrative Procedure Act, 5 U.S.C. § 554. Our bid protest proceedings, however, are neither held under nor governed by the Administrative Procedure Act, which excludes the legislative branch of which we are a part. See 5 U.S.C. § 551(1)(A). Accordingly, the Equal Access to Justice Act provides no authority for award of attorneys' fees or costs incurred by the prevailing party in a bid protest. See Ex-Cel Fiber Supply, Inc., 62 Comp. Gen. 86 (1982), 82-2 CPD 529 and cases cited therein.

The claim is denied.


for Comptroller General
of the United States